

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.MC.No. 2268 of 2007()

CRIME NO.12/03 OF PEROORKADA POLICE STATION
SC.2035/2004 of ADDL. SESSIONS COURT (ADHOC)-II, TRIVANDRUM
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PETITIONER: ACCUSED 1 TO 3

1. SHABEER, S/O.MUHAMMED SALI, MANGULAM
HOUSE, MUTTADA P.O., THIRUVANANTHAPURAM.
2. SHANAZ SHABEER, S/O.SHABEER, RESIDING
-DO-
3. SHADIL SHABEER, S/O.SHABEER, RESIDING
-DO-

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS: COMPLAINANT & STATE

1. THE SUB INSPECTOR OF POLICE,
PEROORKADA POLICE STATION.
2. STATE REP; BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

Crl.M.C.No. 2268 of 2007

Dated this the 16th day of July, 2007

ORDER

The petitioners face allegations, inter alia, under Section 308 r/w. 149 I.P.C. In the course of investigation, the petitioners had obtained anticipatory bail. But they were not arrested by the police, it is submitted. After the investigation was completed, final report was filed. The case was committed to the court of Sessions. Before the Court of Sessions the petitioners did not appear. Consequently the learned Sessions Judge issued non-bailable warrants to procure the presence of the petitioners.

2. According to the petitioners they are absolutely innocent. There was no wilful laches on their part in not appearing before the learned Judge. They are prepared to appear before the learned Sessions Judge and seek regular bail. But they apprehend that their application for bail may not be considered by the learned Judge on merits, in accordance with law and expeditiously. They contend that in as much as anticipatory bail having granted to the petitioners, the learned Sessions Judge should not have issued non-bailable warrants. Notwithstanding the grant of anticipatory bail earlier, if the indictee

does not appear before the learned Sessions Judge as summoned or later, certainly to procure his presence the learned Sessions Judge has the jurisdiction to issue warrant of arrest.

3. It is certainly for the petitioners to appear before the learned Judge and explain to the learned Judge the circumstances under which they could not appear before the learned Sessions Judge. I have no reason to assume that the learned Judge would not consider the application for bail to be filed by the petitioners when they surrender before the learned Judge, on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued by this Court in the decision in Alice George v. Dy.S.P. of Police (2003 (1) KLT 339).

3. This application is accordingly dismissed. I may however hasten to observe that if the petitioners appear before the learned Sessions Judge and apply for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Judge must proceed to pass orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

